



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

GERALD C. MANN  
~~WILLIAMSON~~  
ATTORNEY GENERAL

Honorable Ed Gunn  
Criminal District Attorney  
Milam County  
Cameron, Texas

Dear Sir:

Opinion No. O-4815  
Re: Legality of issuance of tax  
receipts on Sunday, and related  
matters.

Your letter of January 1, 1943, requesting the opinion  
of this department reads as follows:

"You will note the questions in writing from  
the Tax Collector of Milam County, and my answer  
in writing, giving my opinion on same.

"Please give me your opinion on the questions  
for the benefit of the Tax Collector."

The letter of the Tax Assessor-Collector presenting the  
questions on which you desire our opinion reads in part as  
follows:

"The law gives Tax-payers up to, and including  
January 31st of the following year for which taxes  
are assessed, to pay their State, County, and Voting  
Poll Tax Receipts, without penalty.

"January 31st, 1943 falls on Sunday. In this  
case, in your opinion, will it be legal to issue Tax  
receipts and voting Poll Tax receipts on Sunday,  
January 31st, or will it be legal to issue 1942 Tax  
receipts without penalty and 1942 Voting Poll Tax  
receipts on Feb. 1st, 1943?

". . . . ."

Under our statutes, taxes paid on or before January 31st  
of the next succeeding year, for which they were assessed are not  
delinquent. In other words property taxes do not become delin-  
quent until after the 31st day of January following the year in

which they are due. (Houston Oil Company of Texas v. Howard, 256 S.W. 340.)

Chapter 2, Title 7 of Vernon's Annotated Penal Code contains the statutes commonly referred to as the Sunday laws. Under these statutes certain labor done on Sunday is a criminal offense. After carefully considering these statutes it is our opinion that they do not prohibit an officer from performing his official duties on Sunday.

We quote from Texas Jurisprudence, Volume 39, page 877 as follows:

"At common law, Sunday is dies non juridicus (a non juridical day); and it was stated in an early case that no judicial function can lawfully be exercised on Sunday. The statute declares that no civil suit shall be commenced nor process issued or served on Sunday except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings. The act formerly contained the same prohibition with respect to legal holidays.

". . . . .

"Neither the Constitution nor the civil statutes lay any restrictions upon the Governor nor upon any of the heads of the state departments with respect to Sundays or legal holidays; all public officers may keep their offices open on Sundays and holidays, and perform all ministerial duties; but it is their privilege to refuse to function on those days, if they elect."

We quote from the case of Stephens v. Porter, 69 S.W. 423, as follows:

". . . There is no law in Texas prohibiting the commissioner of the general land office from holding his office open on Sunday or any legal holiday, or from performing official acts on those days. Neither our constitution nor our civil statutes lay any such restrictions upon the governor nor upon any of the heads of the state departments, probably because it might sometimes be necessary for them to perform their official functions on those days. Our criminal statute (Pen. Code 1895, art. 196) provides that any person who shall 'labor on Sunday' shall be fined,

etc. 'Labor' is defined as follows: 'To exert muscular strength; to exert one's strength with painful effort, particularly in servile occupations, to work; to toil.' Webst. Int. Dict. 821. The term as used in the criminal statutes does not apply to an officer engaged in the performance of his official duties. The common law did not prohibit officers from doing ministerial acts on Sunday nor on holidays. It declared that Sunday was dies non juridicus, not a judicial or court day, but our statute (Rev. St. 1895, art. 1180) has modified the common law by simply declaring that 'no civil suit shall be commenced, nor shall any civil process be issued or served on Sunday, or any legal holiday, except in cases of injunction, attachment or sequestration'. This exception operates as modification of that law, according to a wellknown rule of construction. Under this statute it has been held that a sale under execution and sheriff's deed made on a legal holiday was valid. *Crabtree v. Whiteselle*, 65 Tex. 111. See, also, *Railway Co. v. Harding*, 63 Tex. 162, where it was held proper and valid for a district court to try a cause on a legal holiday. In *Insurance Co. v. Shrader*, 89 Tex. 35, 32 S.W. 872, 33 S.W. 112, 30 L.R.A. 498, 59 Am. St. Rep. 25, it was held by our supreme court that an application for writ of error received by the clerk of this court on Sunday, and so indorsed, but not filed until Monday, must be considered as filed on Sunday and valid. The reasoning of our supreme court in the three cases cited leaves no doubt in our minds that the application of Porter to purchase section 58 in this case was not void by reason of its being received and filed in the general land office on Sunday, but was as valid in all respects as if received and filed on any other day in the week."

Under the Texas statutes every person subject to pay a poll tax must pay said poll tax before the 1st day of February next preceding the election in which they desire to vote. Article 2963, Vernon's Annotated Civil Statutes places a mandatory duty upon the Tax Assessor-Collector to stamp on the face of any poll tax receipt issued after January 31st of any year the words "Holder Not Entitled To Vote". Certainly this provision would be violated where the Tax Assessor-Collector issued a poll tax receipt after January 31st without the notation thereon as prescribed by said statute.

In view of the foregoing you are respectfully advised that it is the opinion of this department that a poll tax receipt bearing the date of January 31, 1943, would entitle the holder thereof to vote, if not otherwise disqualified, even though it was issued on Sunday. You are further advised that a poll tax receipt issued on Monday, February 1, 1943, must be stamped by the Tax Assessor-Collector "Holder Not Entitled To Vote", and that the holder thereof is not entitled to vote.

With reference to property tax receipts you are advised that the Tax Assessor-Collector can legally collect property tax on or before January 31st, 1943, and issue his receipt therefor without penalty. In other words property taxes are not delinquent until after January 31, 1943, that is property taxes for the preceding year. On February 1, 1943, property taxes that are unpaid become delinquent and the Assessor-Collector of taxes is not authorized to collect said taxes and issue a receipt therefor without the penalties, etc., as prescribed by statute.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/ Ardell Williams  
Ardell Williams  
Assistant

AW:mp:wc

APPROVED JAN. 9, 1943  
s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/GWB Chairman